SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
10/30/2001

*** FILED ***
11/14/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-090100
Docket Code 512 Page 1
FILED: _____

STATE OF ARIZONA
v.
DAVID MARK KAUFMAN

GERALDINE R MATTERN

DAVID MARK KAUFMAN
4651 E UNIVERSITY DR
PHOENIX AZ 85034-0000

REMAND DESK-SE
TEMPE CITY COURT
JUDGE H. WEILAND
TEMPE CITY COURT
140 E 5TH STREET, STE. 200
TEMPE AZ 85281

MINUTE ENTRY

TEMPE CITY COURT
Cit. No. #1101084
Charge: A. SPEED GREATER THAN REASONABLE AND PRUDENT
DOB: 06/21/61
DOC: 02/23/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on October 16, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. The Court has reviewed and considered the transcript of the proceeding before the Tempe City Court, the exhibits made of record and the Memoranda submitted by Appellant.

Appellant claims that he was denied his due process right to a fair trial because the trial judge set time limits for Appellant's cross-examination of Police Officer Edwin Wells, and the presentation of Appellant's own case. Because of these time limits, Appellant was precluded from presenting any testimony on his own behalf. The judge gave

Appellant an opportunity to present a closing argument, and Appellant utilized that time arguing with the judge.

This Court takes quite seriously its commitment to searching the record for error. All parties and persons appearing in Arizona Courts have the right to due process guaranteed by the Arizona Constitution Article II, Section 4. That right includes the right to present one's case to a fair and impartial magistrate. When an appellate court finds a denial of an essential component of due process, such a denial normally constitutes fundamental error.[1]

In this case the trial lasted over one (1) hour. The transcript of that trial reflects that the direct testimony of Tempe Police Officer Edwin Wells lasted for four pages. The cross-examination by Appellant of Tempe Police Officer Edwin Wells lasted for 66 pages! Approximately halfway through the trial the trial judge notified Appellant that the court closed at 5:00 p.m.:

> You're getting a time limit on your case management here because you're just wandering around asking questions that aren't specifically focused, when he's answered your question, and you just keeping asking the same question. That's wasting time. Now move on with your questioning.[2]

After the trial judge announced the time limit, Appellant argued with the judge repeatedly. Near the end of the trial, the judge also warned Appellant that in 10-minutes his time would be up.[3]

Contrary to Appellant's assertions, the tone of the trial judge as indicated from the transcript was polite, but firm. Appellant's statements were rude, and appear to have been calculated to bait the trial judge. Appellant was not successful. At one point Appellant responded to the trial judge (who had cautioned him that a line of inquiry was not relevant): "The nature of the test is exactly what I just represented it to be. Were you not here?"[4] Appellant was extremely fortunate that he was not held in direct contempt of court for his disrespect to the trial judge.

It is an appropriate concern and responsibility of a trial judge to ensure that a case is presented as expeditiously as possible, without harm to the substantial rights of the parties. In this case, the trial judge set clear time limits. This was not error. It is clear from the record that Appellant repeatedly asked the same or similar questions of Officer Wells in an attempt to make the proceeding last as long as possible. It appears that Appellant has attempted to create error.

This Court finds that the trial court did not err in setting time limits and that Appellant was not denied his due process right to a fair trial.

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[1] See *State v. Flowers*, 159 Ariz. 469, 768 P.2d 201 (App. 1989).
[2] R.T. of June 19, 2001, at page 32.
[3] Id. at page 60.
[4] Id. at page 63.

Appellant alleges insufficient evidence to support the trial judge's finding. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[5] All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.[6] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.[7] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[8] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[9] The Arizona Supreme Court has explained in *State v. Tison*[10] that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[11] This Court has reviewed the record and determines there is substantial evidence which was presented which would warrant Appellant's conviction and sentence for the charge of Speeding.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Tempe City Court.

IT IS FURTHER ORDERED remanding this matter back to the Tempe City Court for all future proceedings.

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[5] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).
[6] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[7] *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[8] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[9] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[10] Supra.
[11] Id. At 553, 633 P.2d at 362.